

HARVEY M. HALE,

Plaintiff,

vs.

JOHN DOE # 1, JOHN DOE #2, and
UNKNOWN BURTON,

Defendants.

Case No. 4:09cv1939 TCM

Pending in this 42 U.S.C. § 1983 action is a pro se motion by plaintiff, Harvey M. Hale, for leave to file an amended complaint naming Sargent Pelton, Deputy Jackson, Detective Leon Burton, Officer Williford, and Officer Lovern as defendants. The first two defendants appear to be employed by the Franklin County Police Department; the last three appear to be employed by the City of Union Police Department. Plaintiff alleges in his amended complaint that officers Pelton and Williford assaulted him without cause and that Pelton, Jackson, and Burton stood silently by and watched.

"A district court should freely give leave to a party to amend its pleadings when justice so requires, Fed.R.Civ.P. 15(a); however, it may properly deny a party's motion to amend its complaint when such amendment would unduly prejudice the non-moving party or would be futile." **Popoalii v. Correctional Medical Services**, 512 F.3d 488, 497 (8th Cir. 2008) (citing Kozohorsky v. Harmon, 332 F.3d 1141, 1144 (8th Cir. 2003)). "A court abuses its discretion when it denies a motion to amend a complaint unless there exists undue delay, bad faith, repeated failure to cure deficiencies by amendments previously allowed, undue

prejudice to the non-moving party, or futility of the amendment." **Id.** (citing Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8th Cir. 1998)). Plaintiff has moved, before a responsive pleading has been filed, to amend his complaint to identify officers formerly referred to as "Doe" or "Unknown Officers to Be Named." There is no prejudice and appears to be no futility.

For good cause shown,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file amended complaint is **GRANTED**. [Doc. 22]

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the amended complaint as to defendants Sargent Pelton, Deputy Jackson, Detective Leon Burton, Officer Williford, and Officer Lovern.

IT IS FINALLY ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants Sargent Pelton, Deputy Jackson, Detective Leon Burton, Officer Williford, and Officer Lovern shall reply to Plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 23rd day of June, 2010.